IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/03/2003

CORAM

THE HONOURABLE MR. JUSTICE E. PADMANABHAN

W.P. NO. 9519 OF 1998

Manoranjan Pattanaik .. Petitioner

-Vs-

1. The Inspector General
CISF (SWS), FCFL Complex
Chembur, Mumbai 74.

2. The Asst. Inspector General/L&R
CISF (Min. Of Home Affairs)
Block No.13, CGO Complex
Lodhi Road, New Delhi 110 003.

3. The Deputy Inspector General/DAE
CISF/DAE Zonal Hqrs.
Post E.C.I.L.
Hyderabad 560 062.

4. The Commandant
CISF Unit
DAE Kalpakkam.

5. The Deputy Commandant
CISF Unit, Kalpakkam. .. Respondents

Petition filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus as stated therein.

For Petitioners : Mr. R.Ramesh

For Respondents : Mr. Balaji

:ORDER

1. The petitioner, Manoranjan Pattanaik, has prayed for the issue of a writ of certiorarified mandamus calling for the records pertaining to the order in No.14098/CISF/DAR/AD-I/SKS/97-1899 dated 13.5.1997 of the 3rd respondent and order bearing No.E-30013/Termination/AD-II/ SWS/97-4799 dated 21.8.1997 of the first respondent and order No.V-1101 4/5/97-L&R//483 dated 17.12.1998 of the 2nd respondent, quash the same and direct the respondents to reinstate the

petitioner in service with all consequential and other benefits.
2. The petitioner was appointed as HC (Driver) on probation for a period of two years by the commandant, CISF Unit, Nalco, Angul, Nalwa Nagar, Orissa. At the time of recruitment and appointment, the petitioner was asked to sign an agreement as prescribed by Section 15 in Appendix-A of CISF Act, 1968, besides the petitioner was asked to sign an attestation form also, which contained various details. During the period of probation, the petitioner was served with a show cause notice by the 5th respondent calling upon him to show cause as to why his services should not be determined as he has suppressed in his attestation form about his involvement in a criminal case at the time of appointment. On 7.4.97, the petitioner submitted a detailed reply to the show cause notice explaining the facts and the reasons for filling up the attestation form. Once again the petitioner was served with a show cause notice by the 4th respondent by proceedings dated 13.5.97 terminating the services of the petitioner with immediate effect. The petitioner preferred an appeal before the 2nd respondent. The 2 nd respondent rejected the appeal on merits and confirmed the orders of termination. The petitioner preferred a further appeal to the first respondent to interfere, which the first respondent also declined. Hence, the present writ petition.
3. The petitioner contends that the proceedings of respondents 1 to 3 impugned suffers with errors apparent on the face of the record and the termination order is not termination simplicitor, but it is a punitive termination casting stigma and without holding an enquiry or framing charges, as provided in Section 29 of The CISF Act read with CSSF Rules. The impugned proceedings is illegal, arbitrary and liable to be quashed. The termination order is violative of Section 19 and 12 (1)(b) of The CISF Act and the Rules framed thereunder. The information furnished in the attestation form cannot be considered as a suppression of fact and violation of any of the rules or agreement and the impugned proceedings are liable to be quashed.
4. A counter has been filed on behalf of the respondents by the Commandant, CISF Unit, Kalpakkam. The material portion of the counter affidavit reads thus :-
"4) The petitioner was put on probation w.e.f. 20.3.1996 for 2 years. The petitioner had executed a form of agreement. As per clause 2 (a) of the said agreement the services of the petitioner can be terminated by the Deputy Inspector General at any time during the period of his initial training or his period of probation thereafter on issue of notice of one month or rendering of one month's pay in lieu of such notice. This agreement was duly executed by the petitioner as per the Rule 15 of CISF Rules, 1969. As per Rule 19 (2) if the probationer is unsuitable he shall be liable to be discharged.
5) The petitioner in the attestation form submitted by him had stated that he was not prosecuted at any point of time.
6) While he was on probation in the usual manner a report was sought from Superintendent of Police, Dhenkanal, Orissa State with regard to the character of the petitioner herein. The Superintendent of Police vide his letter dated 13.11.1996 had informed that the petitioner was involved in a criminal case on 19.3.1985 and was prosecuted in the court of S.D.J.M.Kamakhya Nagar, Orissa State. He was prosecuted under Sections 448, 353, 506 and 34 of IPC. The petitioner was acquitted under Section 255 (1) of Cr.P.C. by S.D.J.M. On 2.5.1996. Since the petitioner had suppressed the fact that he was prosecuted, he was issued with a show cause notice and after considering his

representation his service was terminated. The appeals prepared by him, even though there is no provision for appeal against the order of termination was considered and rejected as having no merits. The respondents shall leave of this Hon'ble Court to submit necessary records as aforesaid, if so advised.
7) It is submitted that at the time of joining in the services in CISF the petitioner had executed a form of agreement indicating therein that the DIG in CISF shall have the right to terminate the service of the petitioner by giving notice of one month or one month pay and allowances. It is also submitted that in the form of attestation duly filled in by the petitioner that there was a clear stipulation on the top of the form that in case of submission of incorrect or false information his service is liable to be terminated. A copy of the form of agreement executed by him and form of attestation duly filled in by him are filed as Exhibit 'A' and 'B' respectively in this counter affidavit. The services of the petitioner were terminated as the petitioner was found unfit to be a member of security force as the petitioner had concealed the facts of his involvement in a criminal case under Sections 448, 353, 506 and 34 IPC before his appointment and despite warning given in the attestation form. His services were rightly terminated under Rule 15 of CISF Rules read with Form of Agreement executed by him at the time of his appointment in CISF by following the relevant rules in letter and spirit. It is not the case that the petitioner was not aware of the warning at the time of filling of attestation form and that offer of appointment was subject to verification of his character and antecedents. The petitioner is an educated person and offered an appointment in Group 'C' post."
5. It is contended that the various contentions advanced by the petitioner are devoid of merits and being a probationer, the respondents are well founded in terminating a probationer. It may be that the petitioner may have been acquitted, but he has set out a false reply, while filling up Column 12 (a) with respect to his involvement in a criminal case and his being prosecuted. This is a material suppression and by this the petitioner forfeits his rights to the appointment. Only on verification it came to light through the Superintendent of Police, Dhenkanal, about the petitioner being prosecuted. A show cause notice was issued. After following the procedure prescribed, the orders impugned were passed. It is contended that the various contentions advanced by the petitioner are untenable. There are absolutely no merits and this Court would decline to issue a writ as prayed for on the admitted facts.
6. The points that arise for consideration in this writ petition are :-
"i) Whether the proceedings impugned in this writ petition are liable to be quashed ?
ii) Whether the respondents have acted arbitrarily in terminating the service of the petitioner, a probationer ?
iii) Whether termination imposed is punitive and disproportionate ?"
All the above points could be considered together.
7. The show cause notice issued to the petitioner, reads thus :-
"2) Whereas on verification of his character and antecedents from the District Magistrate, Dhenkanal, Orissa, it is found that the individual was involved in a criminal case on 19.3.85 and was charge sheeted (i.e.) Before the date of appointment in CISF). But, this fact has been suppressed by him in the attestation form supplied by CISF authorities during his initial appointment.
3) Whereas CISF No.963170015 H/Const.(DVR) Manoranjan Pattanaik of CISF Unit, DAE Kalpakkam is found unsuitable for retention in the Force for suppression

of factual information to his appointing authority."
8. In the representation or objection submitted, the factual matrix has been admitted by the petitioner, namely, his suppressing the material fact by answering Column 12 (a), the material portion of which reads thus:-
(a)
Have you ever been arrested ?

No
(b)
Have you ever been prosecuted ?

No
(c)
Have you ever been kept under detention ?

No
(d)
Have you ever been bound down ?

No
(e)
Have you ever been fined by a Court of Law ?

No
(f)
Have you ever been convicted by a Court of Law for any offence ?
No

9. Concedingly, the petitioner was prosecuted and he faced prosecution for offence under the Indian Penal Code. He claims that he has been acquitted under Section 255 (1) of The Code of Criminal Procedure. Therefore, it is clear the answer in particular referred to above are false statements and it reflects on the antecedent character of the petitioner.
10. The very appointment of the petitioner as probationer is subject to the following conditions :-
"b) The attached certificate of character (Annexure-IV) may also be got completed and signed in appropriate column from the Gazetted Officer and then from SDM/District Magistrate of your district.
c) Verification of your character by the Police."
11. After filling up the annexure the petitioner has declared that the information is complete to the best of his knowledge and belief and also added that he is not aware of any circumstance, which may impair his fitness for employment in the Government. Therefore, it is obviously clear that the petitioner, as rightly concluded by the respondents is unsuitable for retention in the force for suppression of factual information to the appointing authority. The petitioner has involved himself in the criminal case and was charge-sheeted before the date of appointment, which fact he has suppressed in the attestation form submitted by him during his initial appointment. There is no dispute at all and what is admitted by the petitioner is plea of ignorance and as he has been subsequently acquitted by the Court and, therefore, it is not necessary to disclose it.

12. When the forms are to be filled up with true and correct answers, the petitioner should have filled up the forms and even assuming that he was acquitted subsequently, it is for the respondents to verify under what circumstance he was acquitted ? whether he was acquitted for benefit of doubt ? or whether the prosecution if for offence involving moral turpitude or not ? Having suppressed the material fact, which has a bearing to judge the suitability for appointment in the force, by suppression of factual information, the petitioner has invited the termination. It is not as if the termination is for a misconduct after the appointment, but it is on the basis of suppression and false declaration or untrue statement, a relevant information to judge the antecedents and the desirability for being appointed. This is prior to the selection and appointment, while on the anvil of his entry into service. The petitioner has been given sufficient opportunity in this respect and, therefore, the termination is a termination of a probationer simpliciter.

13. The learned counsel for the petitioner contended that it casts a stigma and, therefore, there should have been an enquiry and that at any rate, the extreme punishment of termination of service is not warranted. This Court is unable to sustain the said contentions advanced by the learned counsel for the petitioner. The show cause notice issued during the probation period and orders came to be passed before the declaration of probation.

14. It is also settled legal position if appointment is secured by the petitioner on the basis of his false representation and declaration, it would necessarily amount to misrepresentation and fraud on the respondents and the same would not create any equity in favour of the petitioner nor the petitioner could invoke the rule of estoppel. For such misconduct, termination would be justified. In this respect, the attention of this Court is drawn to the pronouncement in UNION OF INDIA & OTHERS VS. M.BHASKARAN reported in 1995 SUPP. (4) SCC 100, where the Apex Court held thus :-

"6) ..... Learned counsel for the respondents submitted that for getting service in railway as casual labourers, it was strictly not necessary for the respondents to rely upon such casual service cards. If that was so there was no occasion for them to produce such bogus certificates/service cards for getting employed in railway service. Therefore, it is too late in the day for the r espondents to submit that production of such bogus or forged service cards had not played its role in getting employed in railway service. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once the fraud of the respondents in getting such employment was detected the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer-appellant after following the due procedure of law and complying with the principles of natural justice. ..... As laid down in the aforesaid decision, if by committing fraud any employment is obtained, such a fraudulent practice cannot be permitted to be countenanced by a court of law. ..... It is difficult to agree with this contention. By mere passage of time a fraudulent practice

would not get any sanctity."
15. The learned counsel for the petitioner relied upon the pronouncement of the Supreme Court in REGIONAL MANAGER, BANK OF BARODA VS. PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL reported in 199 9 (1) SUPREME 265. But unfortunately for the petitioner, their Lordships of the Supreme Court in the said pronouncement made it clear that the pronouncement is rendered on the peculiar facts and circumstances of the case and it shall not be treated as a precedent in future. Hence, this Court will be justified in following the pronouncement in Baskaran's case reported in 1995 Supp. (4) SCC 100.
16. There is no reason at all to hold that the order of termination is punitive in this case as it is not for commission or omission on the part of the petitioner, which was committed by him after his appointment, which may come under one or more of the misconduct.
17. In this case, sufficient opportunity was afforded to the petitioner by issuing a show cause notice calling upon the petitioner to state his objections and, therefore, even assuming the order is not an innocuous order, principles of natural justice has been followed and the petitioner's contention has been considered. Further there are no factual disputes and the petitioner has admitted his being prosecuted and facing criminal charges prior to appointment.
18. In any view of the matter, this Court holds that no case has been made out for interference and all the points are answered against the writ petitioner. At any rate this is not a fit case, where this Court would be justified in interfering under Article 226 and the proceedings of the respondents are not liable to be interfered as the respondents are the best judges to decide what should be the order to be passed on facts.
19. In the result, this writ petition is dismissed. The parties shall bear their respective costs.

Index : Yes
Internet : Yes

GLN

To

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